



**UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES**

DATE PREPARED: 12-6-79

RE: "BODINE PRODUCE CO.," CASE NO. 80-TLC-1

ON OCTOBER 30, 1979, THE EMPLOYER, BODINE PRODUCE CO., SENT THIS OFFICE ("OALJ") A TELEGRAM STATING: "IN ORDER TO PRESERVE OUR RIGHT TO REVIEW OF THE DENIAL OF CERTIFICATION BASED ON EXISTING LABOR DISPUTE, NOTICE IS HEREBY GIVEN AND REQUEST IS HEREBY MADE . . . 7 FOR AN EXPEDITED ADMINISTRATIVE JUDICIAL REVIEW . . . INFORMATION 'WAS RECEIVED ON 26 OCTOBER 1979 THAT THE UNITED STATES DEPARTMENT OF LABOR HAD MADE A DETERMINATION THAT A LABOR DISPUTE EXISTED AT BODINE PRODUCE CO., INC., IN SUN CITY, ARIZONA. REQUEST IS MADE FOR WRITTEN VERIFICATION OF THE DETERMINATION AND THE BASIS THEREFORE, AND FOR ANY AND ALL MATERIAL UPON BASED" (SIC).

SUBSEQUENTLY, THE OALJ RECEIVED AN APPEAL IN THE MATTER. THE APPEAL FILE INDICATES THE FOLLOWING: IN JUNE 1979, THE EMPLOYER FILED AN APPLICATION FOR TEMPORARY LABOR CERTIFICATIONS FOR 40 ALIENS TO BE EMPLOYED AS HARVEST WORKERS. ON JULY 13, THE REGIONAL ADMINISTRATOR ("RA") IN SAN FRANCISCO FOR THE EMPLOYMENT AND TRAINING ADMINISTRATION ("ETA") OF THE U.S. DEPARTMENT OF LABOR ("USDOL") SENT THE EMPLOYER A TELEGRAM DENYING THE CERTIFICATION. ON JULY 16, THE EMPLOYER NOTIFIED THE RA THAT THE APPLICATION HAD BEEN AMENDED PURSUANT TO THE RA'S INSTRUCTIONS. ON AUGUST 3, THE RA INFORMED THE EMPLOYER THAT THE AMENDED APPLICATION HAD BEEN ACCEPTED FOR PROCESSING, AND INSTRUCTED THE EMPLOYER REGARDING RECRUITMENT EFFORTS. ON AUGUST 31, THE EMPLOYER NOTIFIED THE RA THAT 45 U.S. WORKERS HAD BEEN RECRUITED TO FILL THE JOBS IN QUESTION. ON SEPTEMBER 11, THE RA NOTIFIED THE EMPLOYER THAT ITS APPLICATION FOR TEMPORARY LABOR CERTIFICATIONS HAD THEREFORE BEEN DENIED. THE RA'S NOTIFICATION ALSO INFORMED THE EMPLOYER OF ITS RIGHT TO REQUEST, WITHIN 5 DAYS, ADMINISTRATIVE-JUDICIAL REVIEW OF THAT DENIAL PURSUANT TO 20 CFR PART 656 ON SEPTEMBER 20, THE RA NOTIFIED THE EMPLOYER THAT, SINCE THE EMPLOYER HAD NOT, WITHIN THE 5-DAY PERIOD, REQUESTED SUCH REVIEW, THE RA HAD NOTIFIED THE U.S. IMMIGRATION AND NATURALIZATION SERVICE ("INS") THAT THE REQUESTED CERTIFICATION HAD

BEEN DENIED AND THAT THE EMPLOYER HAD NOT SOUGHT REVIEW OF THE DENIAL.

ON NOVEMBER 1, THE APPEAL FILE INDICATES, THE USDOL FURTHER NOTIFIED THE INS THAT THE USDOL HAD DETERMINED THAT A LABOR DISPUTE INVOLVING A WORK STOPPAGE BY CITRUS CROP PICKERS AGAINST THE EMPLOYER WAS IN EXISTENCE AND THAT THE EMPLOYMENT POLICIES OF THE USDOL WOULD NOT BE ACHIEVED IF U.S. OR ALIEN WORKERS WERE REFERRED TO OR ADMITTED FOR EMPLOYMENT AS CITRUS CROP PICKERS FOR THE EMPLOYER.

THE USDOL SOLICITOR'S OFFICE HAD SUBMITTED A MOTION FOR DISMISSAL OF THIS MATTER ACCOMPANIED BY A MEMORANDUM OF LAW."

TITLE 20 CFR 655.204(d) PROVIDES THAT AN EMPLOYER WISHING ADMINISTRATIVE-JUDICIAL REVIEW OF A DENIAL OF A TEMPORARY LABOR CERTIFICATION MUST "WITHIN FIVE CALENDAR DAYS OF THE DATE OF THE NOTICE, TELEGRAPH A WRITTEN REQUEST FOR SUCH A REVIEW TO THE CHIEF ADMINISTRATIVE LAW JUDGE . . . AND TO THE REGIONAL ADMINISTRATOR." THE SAME TIMELINESS REQUIREMENTS ARE INCLUDED; BY REFERENCE, IN 20 CFR 655.205(c), SECTIONS 204.204(e), 655.205(d), 655.1 206(c), AND 655.212(a), ALL MAKE IT CLEAR THAT SUCH ADMINISTRATIVE-JUDICIAL REVIEW SHALL TAKE PLACE ONLY IF THE REQUEST FOR IT HAS BEEN TIMELY SENT, I.E., "WITHIN FIVE I CALENDAR DAYS OF THE DATE OF THE NOTICE."

IN THIS CASE, THE NOTICE OF DENIAL WAS SENT TO THE EMPLOYER ON SEPTEMBER 11, 1979; THE EMPLOYER WAS DULY INFORMED IN THAT NOTICE OF HIS RIGHT TO REQUEST REVIEW WITHIN FIVE CALENDAR DAYS: NOTWITHSTANDING THAT NOTICE, THE EMPLOYER DID NOT FILE SUCH A REQUEST WITHIN FIVE CALENDAR DAYS. AS A RESULT, THE DENIAL OF CERTIFICATIONS IS FINAL, AND THE OALJ AND ITS HEARING OFFICERS LACK JURISDICTION TO GRANT THE EMPLOYER'S REQUEST FOR REVIEW. THE OALJ AND ITS HEARING OFFICERS ALSO LACK JURISDICTION TO REVIEW, AS IF IT WERE A DENIAL OF CERTIFICATION, ANY POST-DENIAL USDOL DETERMINATION THAT A LABOR DISPUTE AND RELATED WORK STOPPAGE EXIST AND/OR NOTIFICATION TO THE INS OF THAT DETERMINATION.

WALTER MORSE
HEARING OFFICER
U.S. DEPT. OF LABOR